

Application No: 10/666,790 Docket No.: Q137-US8

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REMARKS

Claims 1-54, and 56-65 were previously canceled. Claim 55 is currently amended. Claims 66-88 were previously presented. Accordingly, claims 55, and 66-88 are pending examination.

Elections/Restrictions

The Applicant does not make an election in this Amendment and has not made any elections in prior Amendments.

Rejection of Claims 55, 66-71, 85, 87, and 88 Under 35 USC §102(e)

Claims 55, 66-71, 85, 87, and 88 stand as rejected under 35 USC §102(e) as being anticipated by U.S. Patent Application No. 2002/0001745 A1 (Gartstein et al.).

Claims 66-71, 85, 87, and 88 each depends directly or indirectly from claim 55. Claim 55 specifies electrode assembly includes an electrode in electrical communication with a pin where the "pin extend(s) through (a) first end cap." The Office Action cites paragraphs 55-59, and 62 of Gartstein for this teaching. Applicant has reviewed these paragraphs and has been unable to find this teaching. Additionally, these paragraphs are directed to Figures 1-3, and 5A-5C of Gartstein. Some of these Figures (such as Figure 1) show a current collector 26 that electrically connects a cathode 32 to a positive terminal 20 formed in the top cap 16 (paragraph 55, line 11-12), however, inspection of these Figures shows that the current collector is seated against the cap rather than extending through the cap. For instance, in Figures 1 and 3 the cap 16 is continuous over the top of the current collector 26 and the current collector 26 does not extend through the cap. Accordingly, these figures are consistent with the text in paragraphs 55-59, and 62. As a result, the Examiner is respectfully requested to indicate where this teaching can be found in Gartstein. In the absence of this teaching, Gartstein does not anticipate Independent Claim 55.

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Double patenting rejection

The pending claims stand rejected for double patenting in view of the claims of Patent Application serial number 10/665,687. However, double patenting rejections of divisional applications are improper when the divisional applications result from a Restriction Requirement. For instance, MPEP 804.01 provides the following:

The prohibition against holdings of double patenting applies to requirements for restriction between the related subjects treated in MPEP §806.04

Note that MPEP § 806.04 applies to species elections.

The present Application and Patent Application serial number 10/665,687 ('687) are both divisionals of U.S. Patent Application No. 10/167,688 (parent), filed June 12, 2002. On June 3, 2003, a Restriction Requirement was mailed in the parent application. The present application and the '687 application both result from this restriction requirement. For instance, Independent Claim 55 in the present Application is from claim 55 in the parent application and Claim 43 in '687 is from claim 43 in the parent application. The Restriction Requirement identifies claims 55 and 43 as belonging to different species. As a result, the Restriction Requirement required the Applicant to submit both the current application and the '687 application in order to have each of the species examined.

Because the present Application and the '687 application are both divisional applications that resulted from a Restriction requirement mailed in the parent application, the double patenting rejection is not proper and the rejection should be withdrawn.

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CONCLUSION

The Examiner is encouraged to telephone or e-mail the undersigned with any questions.

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